

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MDL No. 1643

IN RE: EDUCATIONAL TESTING
SERVICE PRAXIS
PRINCIPLES OF LEARNING
AND TEACHING: GRADES
7-12 LITIGATION

SECTION: R(5)

JUDGE VANCE
MAG. JUDGE CHASEZ

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER #2

The Court has considered the comments and proposals of the parties made in writing and at the status conference held on January 20, 2005. Accordingly, it is ORDERED that:

1. Organization of Counsel.

Lead Counsel. The Court appoints Dawn Barrios, of Barrios, Klingsdorf, & Casteix, L.L.P., as the plaintiffs' lead counsel. Plaintiffs' lead counsel shall be responsible generally for

coordinating the activities of the plaintiffs during pretrial proceedings and shall

- (a) after appropriate consultation with other members of the Plaintiffs' Steering Committee and other co-counsel, determine and present the position of the plaintiffs on all matters arising during pretrial proceedings to the Court and to the defendant, whether in briefs, oral argument, or other such fashion as may be appropriate, either in person or by a designee;
- (b) coordinate the initiation and conduct of discovery on behalf of the plaintiffs consistent with the requirements of Fed. R. Civ. P. 26(b)(1), 26(b)(2), and 26(g), including the preparation of joint interrogatories and requests for production of documents and the examinations of witnesses in depositions;
- (c) conduct settlement negotiations on behalf of the plaintiffs, but not enter binding agreements except to the extent expressly authorized;
- (d) delegate specific tasks to other counsel or committees of counsel, as authorized by the Court, in a manner to ensure that pretrial preparation for the plaintiffs is conducted efficiently and effectively;

- (e) enter into stipulations with opposing counsel as necessary for the conduct of the litigation;
- (f) prepare and distribute periodic status reports to the parties;
- (g) maintain adequate time and disbursement records covering services as lead counsel;
- (h) monitor the activities of co-counsel to meet schedules and avoid the unnecessary expenditure of time and money;
- (i) perform such other duties as may be incidental to the proper coordination of plaintiffs' pretrial activities or as authorized by further order of the Court.

Liaison Counsel. The Court appoints Richard Arsenault, of Neblett, Beard, & Arsenault, as the plaintiffs' liaison counsel. Plaintiffs' liaison counsel shall

- (a) maintain and distribute to co-counsel and to opposing counsel an up-to-date service list;
- (b) receive, and, as appropriate, distribute to co-counsel orders from the Court and documents from opposing counsel;
- (c) maintain and make available to co-counsel at reasonable hours a complete file of all documents served by or

upon each party; and

(d) establish and maintain a document depository.

State Court Litigation Liaison. The Court appoints Christopher Seeger of Seeger Weiss, L.L.P., as the state court litigation liaison. At the next pretrial conference, he will inform the Court of the status of the pending motions to stay related state court litigation.

Plaintiffs' Steering Committee. The Court will appoint a Steering Committee of the plaintiffs (PSC). The members of the PSC shall from time to time consult with the plaintiffs' lead and liaison counsel to coordinate the plaintiffs' pretrial activities and plan for trial. The Court has received a number of applications to serve on the PSC. Counsel may object to the appointment of an applicant by a written objection. Objections must be filed with the Clerk by February 1, 2005.

Reimbursement. Reimbursement for costs incurred and fees for services rendered by lead counsel, liaison counsel, and members of the PSC will be set at a time and in a manner established by the Court after due notice to all counsel and after a hearing. Counsel who expect to seek an award of

attorney's fees and reimbursement of expenditures must comply with this Court's directive concerning maintenance and filing of contemporaneous records.

Maintenance of Contemporaneous Records. All counsel shall keep a daily record of the time spent and expenses incurred in connection with this litigation, indicating with specificity the hours, location, and particular activity (such as "conduct of deposition of A.B."). The failure to maintain these records will be grounds for denying court-awarded attorney fees, as will an insufficient description of the activity (such as "research" or "review of correspondence").

Filing. By the fifteenth day of each month, each firm that may seek an award (or approval) of a fee by the Court shall file a report with lead counsel summarizing, according to each separate activity, the time and expenses spent by its members or associates during the preceding month (and the ordinary billing rates of the attorneys in effect during the month) and the accumulated total of the firm's time, hourly rates, and expenses to date. Lead counsel shall file with the Clerk by the last day of the month a report summarizing, for all participating counsel, such time and expenses reports, arranged according to the

particular activities.

2. Service of Documents

Orders. The Clerk shall send a copy of each order to Richard Arsenault on behalf of the plaintiffs and to Stephen Hut, of Wilmer, Cutler, Pickering, Hale & Dorr, and Keith Pyburn, of Fisher & Phillips, on behalf of the defendant.

Pleadings, Motions, and Other Documents. Defendant shall serve plaintiffs by providing one copy of the pleading or other document to Richard Arsenault on behalf of the plaintiffs. Plaintiffs shall serve defendant by providing one copy of the pleading or other document to both Stephen Hut and Keith Pyburn on behalf of the defendant.

3. Pretrial Schedule

Motions to Remand. There are pending motions to remand in *Miller v. ETS, et al.*, Civ. A. No. 04-3436, and *Billet v. ETS*, Civ. A. No. 04-3444. The motion to remand in the *Billet* case is deferred until a later date. The *Miller* remand motion will be briefed as follows. The plaintiff has until February 7, 2005 to supplement his memorandum in support of the motion to remand. The defendants have until February 21, 2005 to respond. The plaintiff then has until February 28, 2005 to reply.

Master Complaint. The plaintiffs will file a master complaint by March 10, 2005.

Rule 12 Motion. The defendant shall file its Rule 12 motion by April 11, 2005. The defendant's brief in support of the motion shall not exceed 45 pages in length. The plaintiffs shall file a consolidated brief in response to the defendant's Rule 12 motion by May 2, 2005. Plaintiffs' consolidated response shall not exceed 45 pages in length. The defendant may file a reply brief by May 16, 2005. The reply brief shall not exceed 15 pages. Unless the Court sets a special hearing date, the Court will hear argument on the Rule 12 motion at the next scheduled pretrial conference following the close of briefing on the Rule 12 motion.

Answer. The defendant shall answer the consolidated complaint no later than 21 days after the Court rules on the defendant's Rule 12 motion.

4. Discovery

Voluntary Disclosures. The parties shall make voluntary disclosures under Rule 26(a) by March 10, 2005. The parties shall produce the documents covered by the disclosures.

Interrogatories and Document Requests. The plaintiffs may serve one joint set of no more than 25 interrogatories and one joint set of no more than 25 document requests on April 11, 2005. Likewise, the defendant may serve one set of no more than 25 interrogatories and one set of no more than 25 document requests on April 11, 2005. The limit of 25 interrogatories and document requests includes subparts, and the parties may not use "definitions" to exceed the numerical limit.

The parties will respond to these interrogatories and document requests by May 11, 2005.

5. Class Certification.

Motion for Class Certification. The plaintiffs shall file an initial statement identifying any class(es) for which they intend to seek certification under Fed. R. Civ. P. 23 within 21 days of the Court's ruling on defendant's Rule 12 motion. The plaintiffs shall file their class certification motion within 120 days from the date of service of the defendant's answer. The defendant's memorandum in response to the class certification motion is due 30 days from the date of service of the plaintiffs' motion. The plaintiffs may file a reply brief within 15 days of service of the defendant's response.

Upon the conclusion of the briefing on the class

certification motion, the Court will notify the parties of the hearing date on the motion for class certification.

Class Certification Discovery Plan. The parties shall submit to the Court by the next pretrial conference a joint discovery plan and schedule setting forth the discovery contemplated before the filing of the class certification motion. The parties shall note any modifications of the Federal Rules of Civil Procedure that they request. If there are issues upon which the parties cannot agree, they shall inform the Court of the nature of their disagreement and the bases for their respective positions.

6. Role of the Magistrate Judge

Magistrate Judge Chalez will perform the typical functions of a magistrate judge in this district. She will hear discovery disputes and conduct settlement conferences. If any parties desire a settlement conference, they are to contact the Court.

7. Document Issues

The parties will submit a written stipulation as to document retention, preservation, and the protection of confidentiality. The parties shall also provide the Court a written stipulation regarding the defendant's communications with putative class

members. The parties will present these stipulations to the Court 48 hours before the next status conference.

7. Website

The Court will create a website to post documents and current developments in the case. The Court expects the website to be accessible from the Eastern District of Louisiana website by early April 2005. The parties may submit suggestions as to the content of the website in writing before the next status conference.

8. Next Conference

The next status conference will take place on Thursday, March 10 at 1:00p.m. CST.

New Orleans, Louisiana, this 24th day of January, 2005.

/s/ Sarah S. Vance
SARAH S. VANCE
UNITED STATES DISTRICT JUDGE